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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,429	09/24/2004	Ludovic Noirie	Q82799	3427
23373 7590 01/18/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER STAHL, MICHAEL J	
			ART UNIT 2874	PAPER NUMBER
			MAIL DATE 01/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/509,429

Applicant(s)

NOIRIE ET AL.

Examiner

Mike Stahl

Art Unit

2874

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 5-9 and 13-16.
Claim(s) rejected: 1-4 and 10-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

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Art Unit 2874
571-272-2360

Continuation of 11. does NOT place the application in condition for allowance because: The rejection under Doerr et al. will be withdrawn if claim 1 as amended is entered. As to Shiragaki et al., the first argument is that Shiragaki does not disclose being configured to be used in packet switching as well as circuit switching, and that the rejection failed to provide rationale or evidence showing inherency. This is not persuasive because the inherency is established by the fact that the reference and the claims have substantially identical structure (MPEP 2112.01(I)). Also the phrase "configured for packet switching and circuit switching" is a functional or intended use recitation (MPEP 2114), and cannot distinguish an apparatus claim over a reference unless it defines a structural difference.

The second argument is that Shiragaki does not provide broadcasting of input signals independently of spectral considerations. The remarks refer to wavelength selectors. However, the space cross-connect unit defined by the rejection specifically excluded the wavelength selectors 54i-j. The space cross-connect unit defined by the rejection does operate independently of wavelength.

The third argument is that the recited relationship between P and C is not met. The rejection explained how, in terms of the reference variables, P is equal to m times n, and C is equal to n. Thus $C = P/m$, and is less than P as long as $m > 1$, which is clearly the case in Shiragaki fig. 5. The remarks allege that the rejection improperly characterized C as including multiple elements 521, 531 and somehow undercounts the number of space switching modules. However, the rejection did explain how an individual space switching module is interpreted. To provide an example here, one space switching module includes the upper set of elements 52i-j and 53i-j in fig. 5 (this set includes the labeled elements 521-1 and 531-1). All of these elements are part of that space switching module because they are all necessary for its function. The m outputs of this module are all ultimately connected to 561. Another example space switching module includes the lower set of elements 52i-j and 53i-j in fig. 5 (this set includes the labeled elements 52n-m and 53n-m). The m outputs of this module are connected to 56n. In total there are n space switching modules in fig. 5, each one having m outputs that are connected to a respective one of the elements 561-56n. The total number of outputs P of the space cross-connect unit is thus equal to m times n. Therefore there is no miscounting in the rejection.

The argument about the inherency assertion in the rejection of claim 12 is not persuasive, since the basis for it was plainly provided in the rejection.

The attempt to overcome the objection to claim 16 is noted but it is still in conflict with claim 1 because lines 11-12 of claim specifically require that each of the N outputs of the broadcast stage comes from a different divider. If there are N outputs, and each is from a different divider, there must be at least N dividers.

Also to clarify the record, claim 16 was NOT indicated as being allowable in the final action, as the remarks allege. It was subject to an objection. A prior art rejection would not have been appropriate until the conflict with the parent claim was resolved.